

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7461

Petition of ValleyNet, Inc., for a Certificate of Public )  
Good to own and operate a cable television system in the )  
State of Vermont, to provide services in the City of )  
Montpelier, and the Towns of Barnard, Bethel, Brookfield, )  
Chelsea, Granville, Hancock, Hartford, Norwich, Pomfret, )  
Randolph, Reading, Rochester, Royalton, Sharon, )  
Stockbridge, Strafford, Thetford, Tunbridge, Vershire, )  
West Windsor, and Woodstock, Vermont )  
)

Entered: 1/22/2010

**CERTIFICATE OF PUBLIC GOOD ISSUED TO VALLEYNET, INC.,**  
**PURSUANT TO 30 V.S.A. §§ 503 AND 504**

IT IS HEREBY CERTIFIED that the Public Service Board ("Board") of the State of Vermont on this date finds and adjudges that the issuance of a Certificate of Public Good ("Certificate") to ValleyNet, Inc. ("ValleyNet" or "VN"), to serve<sup>1</sup> the Towns of Barnard, Bethel , Brookfield, Chelsea, Granville, Hancock, Hartford, Norwich, Pomfret, Randolph, Reading, Rochester, Royalton, Sharon, Stockbridge, Strafford, Thetford, Tunbridge, Vershire, West Windsor, Woodstock, and the City of Montpelier, and the operation of cable systems in said Towns and City, will promote the general good of the State of Vermont subject to compliance with the following conditions.

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1. VN should be aware that, under long-standing Board practice, a certificate for a city, town, or gore is a franchise to serve customers throughout that municipality, subject to the company's line extension tariff and the provisions of the certificate. Any limits that may seem to apply as a result of the Community Unit Identifiers designated by the Federal Communications Commission are artifacts of the FCC's number system, not limitations on this Certificate.

**General Terms**

1. This CPG shall apply to the territory that encompasses those municipalities identified above. VN may expand its service territory to serve additional municipalities only upon Board approval.

2. This CPG does not grant to any entity, other than VN, which may intend to provide cable television service over the above network utilizing an open access arrangement, authority to provide cable television service in Vermont. To the extent required by law, any entity, other than VN, which seeks to offer cable television service using the above cable network shall first obtain a separate CPG from this Board pursuant to 30 V.S.A. §§ 231 and 503.

3. This CPG and the VN's obligations hereunder shall be conditioned upon (a) VN entering into a Design/Build/Operate ("DBO") agreement with East Central Vermont Community Fiber Network ("ECFiber") in substantially the same form as attached to a memorandum of understanding between and among VN and the Vermont Department of Public Service (the "Department") dated March 17, 2009; and (b) VN and/or ECFiber executing a master lease agreement consistent with the prefiled testimony of Timothy E. Nulty dated July 8, 2008, as supplemented on March 9, 2009, as may be necessary to fund the construction of the cable TV system as contemplated herein. VN shall file a copy of the DBO agreement and the master lease agreement with the Board and Department prior to the commencement of construction of facilities for the provision of cable television services and not later than March 31, 2010, provided that VN may file a request with the Board to extend the deadline for compliance with this condition to a date certain.

4. VN shall make a Finance Compliance Filing, which shall include a copy of the DBO agreement, the master lease agreement, a revised copy of the Exhibit D submitted with VN's application for a CPG, and a list of municipalities for which the terms of the lease are sufficient to complete all construction and line extensions required by paragraph 38 for those municipalities. The revised Exhibit D shall be accompanied by an affidavit that it is consistent with the terms of the master lease agreement actually obtained by VN. The list of municipalities shall not be fewer in number than six, at least five of which shall be contiguous. VN shall make the Finance Compliance Filing with the Board and Department prior to the commencement of

construction of facilities for the provision of cable television services and not later than March 31, 2010, provided that VN may file a request with the Board, supported by a showing of good cause, to extend the deadline for making the Financing Compliance Filing to a date certain. If the number of municipalities listed in the Financing Compliance Filing is fewer in number than those listed above, VN shall file by each anniversary date of the Financing Compliance Filing a revised Financing Compliance Filing (a "Supplemental Financing Compliance Filing") reflecting that VN has obtained an additional or revised master lease agreement or other financing sufficient to complete the construction and line extensions required by paragraph 39 for a revised list of municipalities. If on the first anniversary of the Financing Compliance Filing, VN has not obtained sufficient financing, as demonstrated by a Supplemental Financing Compliance Filing, to provide the required construction and line extensions to at least 45% of the municipalities listed above, or 65% of the municipalities by the second anniversary, or 85% of the municipalities by the third anniversary, or 100% by the fourth anniversary, VN shall so state in its Supplemental Financing Compliance Filing and its CPG shall be amended within 90 days of its filing to remove the municipalities not listed in the Supplemental Financing Compliance Filing unless the Board finds it is contrary to the general good of the state or orders a further investigation. VN shall not be required to file Supplemental Financing Compliance Filings after the fourth anniversary of the Financing Compliance Filing unless otherwise requested by the Board. VN's lack of direct ownership over the facilities used to provide regulated public services under this CPG shall not be a valid defense to a complaint or investigation concerning possible noncompliance with this Condition.

5. VN shall obtain all necessary Board approvals as required by 30 V.S.A. §§ 109 and 232, prior to entering into any leases or other arrangements subject to those statutes. VN shall also obtain from ECFiber any approvals that may be required from ECFiber to VN pursuant to any applicable legal documents such as the DBO, master lease agreement, or interlocal agreement, prior to VN entering into any leases or other arrangements subject to those provisions. VN shall not transfer title to or possession of any property or assets constituting 10% or more of the property used in or required for the provision of regulated public services under this CPG, including any equipment subject to a lease, without first obtaining Board approval as required by

Vermont law. VN's lack of direct ownership over the facilities used to provide regulated public services under this CPG shall not be a valid defense to a complaint or investigation concerning possible noncompliance with this Condition.

6. In no event shall VN abandon or curtail service or abandon all or any part of the facilities, except after receiving approval of the Board, as provided in 30 V.S.A. §§ 231 and 505.

7. This CPG may not be transferred without the consent of the Board.

8. VN shall notify the Board and the Department in writing immediately if ECFiber (a) seeks to modify the terms of any agreement under which facilities used for the provision of services under this CPG are used, leased or purchased, (b) is in arrears of any scheduled payments with respect to such infrastructure, or (c) invokes, or provides VN notice of, one or any combination of remedial steps taken with respect to such infrastructure. VN's lack of direct ownership over the facilities used to provide regulated public services under this CPG shall not be a valid defense to a complaint or investigation concerning possible noncompliance with this Condition.

9. Construction, including installation, of the cable system described herein shall conform to all applicable state and federal laws and regulations and the National Electric Safety Code ("NESC"). VN's lack of direct ownership over the facilities used to provide regulated public services under this CPG shall not be a valid defense to a complaint or investigation concerning possible noncompliance with NESC requirements.

10. For the duration of this Certificate, VN shall designate a senior manager whose responsibility shall include oversight of VN's compliance with Vermont statutes, rules, orders and other regulations governing cable operators.

11. If VN or ECFiber enter or has entered into an agreement to lease, sell, or otherwise provide or share facilities or services in Vermont to, or with, any affiliates, the agreement shall be reduced to writing, including the date, and shall be made available to the Department and the Board upon request. VN's lack of direct ownership over the facilities used to provide regulated public services under this CPG shall not be a valid defense to a complaint or investigation concerning possible noncompliance with this Condition.

12. For the purpose of calculating the gross revenue tax under 30 V.S.A. § 22, VN shall use the following definition of gross revenues: all cash, credit, property of any kind or nature, or other consideration received directly or indirectly by VN derived from the operation of the cable system that is subject to this CPG, including, but not limited to, monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional service; pay television fees; pay-per-view fees, premium-service fees, monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection and reconnection fees; late fees charged to subscribers; leased-channel fees; fees, payments or other consideration received from programmers; fees, payments or other consideration received from third parties for lease of space on either fiber or coaxial cable; converter rentals or sales; studio rental, production equipment and personnel fees; advertising revenues; and revenues from home shopping networks and revenues from Internet access service until such time that a gross revenue tax is paid on such revenues as telecommunications services.

13. For purposes of calculating funding for Public, Educational, and Governmental ("PEG") access in the absence of an agreement otherwise, VN shall use the definition of gross revenues in the preceding paragraph except that Internet-access service revenues shall be excluded from the calculation unless and until Congress, the Federal Communications Commission ("FCC"), or a court of competent jurisdiction or governmental agency of competent jurisdiction issues a final ruling or order, not subject to appeal, that such revenues shall be included in such a calculation of gross cable-service revenues.

14. VN shall not itemize on subscriber bills the Vermont gross revenue tax, imposed on VN pursuant to 30 V.S.A. § 22, unless Vermont law allows such itemization.

15. VN shall fund the establishment of a cable advisory council in its territory in accordance with the guidelines contained in Attachment A to this CPG. The advisory council shall meet for the first time no later than 120 days following the Board's issuance of this CPG.

16. VN shall at all times provide a reasonable quality of service, having regard to FCC minimum service standards, available technology, subscriber interest and costs. VN shall at all times offer a reasonably broad range of programming, having regard to available technology, subscriber interest, the revenues and potential revenues of the systems, and costs. The Board

shall, to the extent permitted by law, retain jurisdiction to prescribe broad categories of programming.

17. Prices for services not subject to rate regulation shall at all times be reasonable, having regard to the costs of providing such services.

18. If VN does business in the State of Vermont under any other name other than the name in use on the date of the Order in this Docket, it shall file a notice of the new tradename, along with a copy of its Vermont Secretary of State's Tradename Certificate, with the Clerk of the Public Service Board and the Department thirty (30) days prior to doing so.<sup>2</sup>

19. At the time of filing its Annual Report pursuant to 30 V.S.A. § 22, VN shall also file with the Board the following:

- (1) a copy of VN's PEG Access Report under PSB Rule 8.419 and a description of its access facilities and services and the use thereof during the preceding calendar year or annual period;
- (2) subject to Paragraph 44 of this Certificate, a report of all written consumer complaints and notations regarding oral and telephone complaints received during the preceding calendar year or annual period;
- (3) a map sufficiently outlining the service territory and describing the existing plant and any extensions and replacements planned for commencement or completion within one calendar year from the close of the preceding calendar year or annual period; the fiber runs and node locations shall be shown on the map. This map shall be filed in paper format and in electronic format. The electronic map shall be provided in GIS format as an ArcView shapefile or any other GIS file format mutually agreeable to the Department and VN. The filing should identify the cartographic projection of the electronic map file or that it is in unprojected coordinates (i.e., latitude and longitude). VN may seek confidential treatment of this required filing, if appropriate;
- (4) a listing of services, the rates charged for each service as of the date of the filing of the report, a statement of any changes in any such rates from the preceding calendar year or period and a statement of the revenue derived from each service during such calendar year or annual period;

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2. For a corporate name change, see 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.

(5) a statement of significant changes to be implemented during the current calendar year or annual period in VN's business structure, operating procedures and services to be offered;

(6) a balance sheet, an income statement, and a statement of changes in financial condition, all as of the close of the preceding calendar year or annual period; and

(7) a statement of assets used and useful for the provision of services of regulated public services under this CPG.

VN's lack of direct ownership over the facilities used to provide regulated public services under this CPG shall not be a valid defense to a complaint or investigation concerning possible noncompliance with this Condition.

20. VN shall at all times conduct its operations consistent with Board rules or regulations, and the CPG, and shall at all times comply with Vermont law and all applicable regulations, all as they may be amended from time to time.

21. VN shall comply with all regulations of the FCC, including the regulations governing commercial leased access.

22. This Certificate shall expire eleven years from the date of this Certificate.

23. This Certificate shall be subject to revocation upon good cause, including a substantial or continuous failure to abide by its material terms by VN.

### **PEG Access**

24. PSB Rule 8.400 shall apply to VN, to any access management organizations ("AMOs") which VN may designate and contract with, and to any organizations that seek VN's designation as an AMO. VN shall comply with Rule 8.400 as may be amended from time to time.

25. VN shall designate one or more AMOs as provided in Rule 8.400. VN shall provide levels and types of financial, operational, and technical support to those AMOs that are fair, reasonable, and comparable to the levels and types of support provided by Comcast of Connecticut/ Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC ("Comcast") and Charter Communications, Inc. ("Charter"), to the AMOs designated by Comcast and Charter. This condition shall not preclude VN from

designating the same, different, or additional AMOs than have Comcast and Charter, nor preclude VN from offering different or additional public access content to its cable subscribers.

26. VN shall file with the Board and Department copies of all PEG-access contracts with AMOs, and any amendments thereto, within 30 days of execution.

27. VN must work with the relevant AMO prior to any PEG-access-channel reassignment and shall pay the access entity's reasonable costs of such reassignment. VN shall not reassign a PEG access channel without advance warning and consultation with the AMO.

28. VN shall interconnect the system that provides regulated public services pursuant to this CPG to all AMO studio locations providing programming within the municipalities served by VN. If VN serves the municipality in which an AMO studio is located, VN shall connect directly to the studio, at VN's expense. If VN does not serve the municipality in which the AMO is located, VN shall provide an access point for such AMO up to and within the boarder of VN's territory at VN's expense and the AMO will be responsible to bring its connection to such access point. If the Board designates an entity to act as a statewide PEG AMO pursuant to Rule 8.425, VN shall interconnect, directly or indirectly, with the statewide PEG AMO, Comcast, Charter or their successors, whichever is the technically appropriate solution, to provide transmission of PEG-access programming between the companies' systems. VN shall bear its own costs of the network subject to this CPG associated with this interconnection. In the event that interconnection with Comcast or Charter is appropriate, VN shall negotiate in good faith with Comcast, Charter or their successors, and shall attempt to conclude an interconnection agreement within 120 days of the day when the requirement is triggered. Such an agreement shall include, but not necessarily be limited to, interconnection points, testing, repair and maintenance obligations, means of interconnection, and adherence to transmission standards. If the cable operators cannot reach an interconnection agreement within 120 days, VN shall submit all unresolved issues to the Board for resolution.

29. If the Board has designated an entity to act as a statewide PEG AMO pursuant to Rule 8.425, VN shall upon request of the AMO provide as minimum support for the statewide PEG network the capability of transmitting signals from the statewide network to any PEG forward channel and transmitting to the statewide network signals originating on any PEG reverse

channel on the cable system. Such a request by the AMO for statewide PEG-network capability is to be made at least one year prior to activation of the statewide channel on a VN system.

30. VN shall provide fiber-optic drops, capable of two-way service and remote origination service, upon request, to every school, library, and PEG-access studio, and to at least one municipal building in every municipality in which it is obligated to provide cable service, upon request of the school, library, PEG entity or municipality. VN may provide the two-way service through a drop that is separate from any drop used to provide cable-television service or high-speed Internet access service to that entity. VN shall provide and activate each requested drop within 6 months of receiving a request from the respective school, library, AMO, or municipality, provided, however, that VN is able to obtain all necessary approvals and permits pursuant to Rule 3.700. This condition does not require VN to provide drops to buildings that are neither passed by nor located within 500 feet of cable plant unless an entity is willing to reimburse VN for the incremental cost of the non-standard installation. VN shall provide basic cable service at each drop and shall provide standard installation at no charge. Upon request, VN shall provide an entity described in this paragraph with a non-standard installation, provided the entity pays the difference in cost between the standard and non-standard installation.

31. At a minimum, VN must provide the following PEG access outreach:

- (1) fund semi-annual, quarter-page advertising in local newspapers promoting PEG access programming and functions and assist AMOs in placing their channel programming in a local newspaper's television listing grid where such a listing is feasible;
- (2) provide on-screen advertising and promotion of the PEG access channel programming and facilities; provide at least 1 gigabyte GB of space on VN's Internet access server for each PEG access channel for purposes including, but not limited to, posting program listings, information about scheduling the use of the studio production facilities, post-production editing facilities, training, and scheduling time slots for airing programs on the public access channels; and links to local PEG access web sites related to programs on the channel; and
- (3) allow PEG access groups to access VN's electronic programming guide and pay the fee so that the groups can have their schedules listed on that channel.

32. VN shall respond to reasonable requests by AMOs to communicate with VN's subscribers. Any direct costs incurred by VN due to such communications that are over and above those normally incurred by VN shall be borne by the requesting AMO.

33. VN and each AMO shall reevaluate the digital equipment needs or other PEG access related cable system improvements at least twice during the term of this Certificate. VN shall provide additional capital funding for each such re-evaluation or upgrade based upon the criteria of Rule 8.405. If an agreement cannot be reached, the Board will exercise its authority under 30 V.S.A. § 509(a) or Rule 8.405(e) and open an investigation to consider the necessity and amount of the interim upgrade payments.

34. VN shall provide AMOs the ability to originate as many simultaneous live PEG programs on any part of its system as there are forward PEG channels on that part of the system. VN shall not be obligated to originate any quantity of simultaneous, system-wide broadcasts that exceeds the number of forward PEG channels activated in that part of the system with the smallest quantity of activated forward PEG channels.

35. VN shall create and maintain a plan for reasonable public access in accordance with Rule 8.401 and Rule 8.419. VN shall keep a current PEG Access Report on file with the Board.

36. Total operating funding within each system served by one or more AMOs shall not exceed 5% of the annual gross revenues earned in that system. Unpaid balances owed by VN shall earn interest at the legal rate (see 9 V.S.A. § 41a), commencing the day after the due date.

37. VN shall, on an annual basis, inform every municipality, school, library and AMO in every system subject to this Certificate of the opportunity to have two-way cable drops placed at the locations described in Paragraph 30 and offer to meet to: (1) determine each entity's need for two-way capable drops; (2) in the case of municipalities, discuss the location(s) of such drop feed points within each municipality; and (3) negotiate the specific arrangements necessary for installation and maintenance of such drops.

### **Construction and Line Extensions**

38. Subject to the exceptions and conditions set forth below, VN shall offer cable service to every residence, building, and institution in the municipalities encompassed by this CPG within

60 months of the date that the conditions of this CPG (as specified in paragraph 4 above) are met. Until such time that VN meets the requirements set forth in this paragraph, VN shall file quarterly reports with the Board and the Department, beginning on March 31, 2010, or upon the completion of the first calendar quarter for which VN is authorized to provide service, and continuing until the requirements set forth in this paragraph are satisfied, containing the following information:

- (1) identification of the public ways and extensions to be constructed in each of the municipalities encompassed by this CPG;
- (2) anticipated completion date;
- (3) status of make-ready work affecting the identified construction along the public ways and extensions;
- (4) status of pole applications affecting the identified construction along the public ways and extensions; and
- (5) the projected completion date for the construction along the public ways and line extensions in each of the municipalities encompassed by this CPG to which VN does not yet provide service and an explanation of the reasons for delay, if any, relative to the build-out plan described by VN in its petition for a CPG.

39. The construction and line extension completion date established by the preceding conditions shall be waived only to the extent delay is the result of Force Majeure events beyond the reasonable control of VN, including, without limitation: flood, earthquake, hurricane, ice storm, blizzard, fire, explosion, war, riot, civil disturbance, labor disturbance, strike, sabotage and restraint by court that, by exercise of due diligence and foresight, VN could not have been expected to avoid. If VN is rendered unable to fulfill any construction or line extension obligation by reason of such causes, it shall be excused from performing for the time and to the extent it is prevented or delayed from so doing, but shall exercise due diligence to correct such inability with all reasonable dispatch. Force Majeure events do not include circumstances such as incomplete make-ready work, unavailability of equipment or commercial impracticability; except they shall include incomplete make-ready work, when VN has followed the requirements of PSB Rule 3.700 and the owner(s) of the poles have failed to complete make-ready as required by that rule and by tariffs and VN has timely taken all steps available to it under Rule 3.700 to compel the pole owner(s) to complete make-ready. If VN experiences an event that it contends

qualifies under this subparagraph and that it contends impacts its ability to meet its obligations for completion of all required construction and line extensions within 60 months of issuance of this CPG, it shall petition the Board for waiver or amendment of the condition that established the required completion date.

40. Prior to offering cable service anywhere in the geographic area encompassed by this Certificate, VN shall file with the Board, for the Board's approval, a statement of VN's policy on line extensions. The policy must conform to the provisions of Board Rule 8.313.

### **Customer Care and Communications**

41. VN's deposit and disconnection policies shall at all times be consistent with Board Rules 3.200, 3.400, and 8.000, as they may be amended from time to time.

42. VN shall respond within fourteen (14) calendar days, unless otherwise specified by the Department, to written or verbal inquiries from the Department regarding consumer complaints, the status of a line extension and construction progress. The fourteen-calendar-day period commences upon receipt by VN of the Department's notification of an inquiry or complaint. Notification includes notification by electronic or web-based mail, facsimile, hand-delivery, U.S. mail or verbal contact. In any case in which VN is unable to respond fully, providing all information necessary to resolve the inquiry or complaint, within fourteen days, it must provide notice to the Department before the elapse of the initial fourteen days that an extension of time is required. The Department and VN are permitted to discuss the inquiry or complaint in person or by telephone.

43. VN shall designate a staff person to serve as primary liaison to the Consumer Affairs and Public Information Division of the Department ("CAPI"), providing on an on-going basis current contact information for that individual.

44. VN shall adhere to the customer service standards contained in 47 C.F.R. § 76.309.<sup>3</sup> VN must monitor and report on its customer-service performance in relation to all FCC and Board customer-service standards in accordance with its Service Quality Plan, which may be

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3. All references to sections of 47 C.F.R. are intended to refer to those sections as they shall be amended from time to time.

amended as needed with the agreement of the Department. The initial Service Quality Plan shall conform to Attachment B to this CPG and any amendment(s) must be filed with the Board prior to becoming effective. Quarterly, beginning with the quarter following Board approval of this CPG, VN shall submit monitoring reports on its performance to the Department and the Board. Where quarterly performance falls more than 10 percent below any standard, or where performance does not meet any standard for two consecutive quarters, VN shall submit to the Department and Board a corrective-action plan indicating how it will meet the failed standards.

45. Should consumer complaints to the Department concerning VN exceed a rate of 2.5 escalations per 1000 customers, VN must track and analyze consumer complaints in a manner that will enable their periodic analysis. ("Escalation" is a complaint to the CAPI Division of the Department in which, following investigation, CAPI staff determines reasonably there is something VN could and should have done differently prior to the consumer having to contact the Department for assistance.) Specifically, VN must work with the Department to develop a complaint-tracking protocol that defines what is considered a complaint to VN and complaint categories to be tracked. The system should permit customer-service and sales representatives to capture written, telephonic, e-mail, web-based and face-to-face complaints and to allow easy tabulation and analysis of those complaints by system and topic. If this provision is triggered, on an annual basis VN must submit a report to the Department and the Board indicating the number and nature of complaints received, how they were analyzed by VN, what systemic issues were identified, and what responses were implemented to address those systemic issues. Measurement of the consumer-complaint rate to determine whether this provision is triggered shall be calculated on a calendar-year basis. If this provision is triggered, the requirements of this provision will continue for a period of the subsequent three years.

46. VN shall treat all written complaints from subscribers in accordance with 47 C.F.R. § 76.1619(b) and Board Rule 8.345. VN shall not limit such responses to those complaints that cannot be resolved by a customer-service representative.

47. VN shall annually cause to be mailed to each of its subscribers a notice or notices, developed in consultation with the Department and approved by the Board, to the extent required by law that:

- (1) state that the Board and the Department desire to hear the views of subscribers regarding the quality of services provided by VN and as to the reasonableness of the terms upon which such services are provided;
- (2) inform the subscribers how they may communicate their views to the Board, to the Department, and to VN;
- (3) notify subscribers of the complaint and appeal procedure for complaints against any PEG-access entity and complaints against VN itself; and
- (4) include the notices required by Board Rule 8.341 and 47 C.F.R. § 6.1602(b)-(c).

48. On or before January 30 of each year, VN shall certify to the Board, under oath, with a copy to the Department, that it has distributed the notice(s) required in Condition No. 49, above, during the previous calendar year.

49. VN shall ensure that all customer notices are in plain English, at no greater than a sixth-grade reading level, and that type sizes and layouts are sufficient to render the notices readable to the average consumer. The Flesch-Kincaid Reading Level test, or equivalent instrument that may widely supersede it, shall be used to determine compliance with the grade-level requirement.

50. VN shall provide customers at the time of any service order with a clear and understandable description of the terms, conditions, rates and charges for all requested services and appropriate alternatives, which shall include the least-cost alternatives to the requested service. VN shall disclose, at a minimum, any non-recurring charges, such as for installation, the recurring charges for services, any charges that apply to a change in service or periods in which such charges are waived, and information about equipment, policies and procedures.

51. VN shall not use the term "Basic," alone, in a phrase, or as an abbreviation, in reference to any service tier other than the lowest level of cable service that a subscriber can select. VN shall provide all consumers at the time of installation with a clear written notice complying with 47 C.F.R. §76.1618 that the basic tier of service is available, its cost per month, and a list of all services included in the basic tier.

52. VN shall list the toll-free telephone number of the Department on its bills and in the "complaint procedures" section of its annual notices along with the following language: "You should first try to resolve any complaint or dispute directly with ValleyNet. If you remain

unsatisfied by ValleyNet's response, you may request assistance from the Vermont Department of Public Service Consumer Hotline by calling 1-800-622-4496, or email [consumer@state.vt.us](mailto:consumer@state.vt.us)." VN shall provide a draft of its disconnection notice language to the Department for review and comment.

53. VN's complaint procedure and any other relevant sections of the annual notice provided to consumers shall comply with 47 C.F.R. § 76.1602(b), including specific reference to the "Vermont Public Service Board" as the local-franchising authority for all Vermont systems. At no time shall VN represent to customers, either in writing or orally, that any municipality is a local franchising authority in Vermont.

54. VN shall at all times ensure that its annual customer notice is specific and detailed with respect to Vermont policies and procedures.

55. VN shall ensure compliance with 47 C.F.R. § 76.309(c)(3), which requires that refund checks due to customers shall be issued no later than (a) the earlier of the next billing cycle following resolution of the request or thirty (30) days, or (b) the return of equipment supplied by the operator if service is terminated.

56. If VN decides to raise rates more than once in any calendar year, VN shall include with its rate-change notice to the Board, and provide a copy to the Department of, a written explanation of the circumstances or other reasons that necessitate VN's need to increase its rates.

57. VN shall, no later than sixty (60) days from the Board Order in this docket, submit its disconnection notice to the Board for approval. Such notice shall conform to the requirements of Board Rule 3.403. VN shall not disconnect any customer unless such customer receives a valid disconnection notice in a form that has been approved by the Board.

58. VN shall provide outage credit and/or refunds to customers without the necessity of the customer contacting VN in those instances in which VN knows an outage has occurred and has affected a particular system or portion of a system. VN's outage-credit policies and practices shall at all times be consistent with Board Rule 8.343.

**Institutional Networks**

59. VN shall be obligated to offer service, upon request, enabling every school, library, and PEG-access studio, and at least one municipal building in the municipalities in which it offers cable service to have access to an institutional network or networking on a fee-for-service basis.

60. VN shall develop and submit a proposal within 90 days in response to any qualified request for proposals ("RFP") issued by a state or local government agency, educational institution (accredited elementary schools, secondary schools, colleges and universities, and libraries open to the general public), or educational or governmental access entity ("institutions") seeking an institutional network for voice, video, or data within its franchised area. An RFP shall be deemed qualified if it contains the following information:

- (1) the specific locations to be linked (which may include interconnection points with other cable systems or telecommunications providers to be determined later);
- (2) the desired transmission capacity or amount of dark optical fiber; and
- (3) a description of the desired applications to be operated over the institutional network.

VN shall not be required to construct dedicated facilities for institutional networks, where facilities shared with other services and networks meet the requirements of the institutions. Fulfillment of an RFP involving dark fiber shall not require interconnection of that dark fiber with the network or with a headend used to provide regulated public services under this CPG, nor shall the institution or the users have access to or rights in the headend. It is understood that VN may lease, but will not be required to sell dark fiber. It is understood that VN may not fulfill an RFP requiring dark fiber if the necessary labor and/or material is unavailable or is not available on customary and satisfactory terms.

61. VN's response to a qualified RFP shall include the terms and conditions, including but not limited to rates, tolls, or charges, under which it would make available the institutional network to the requesting entity. Charges for institutional networks shall not exceed the fully-allocated costs incurred by VN and the owners of the network used to provide regulated public services, including a rate of return of 11.25%, to provide the network.

62. VN shall not charge institutions for construction or extension of facilities used for institutional networks that are required to meet other obligations under its Certificate, or to provide services to other customers. VN may charge institutions a proportional share of line extensions not otherwise required that will be used for institutional networks but may also be used to serve cable customers.

63. VN shall offer institutions on a fee-for-service basis the ability to create Wide-Area Networks (WANs) between points in VN's franchise area whether or not the institutions utilize VN as an Internet Service Provider.

64. VN shall offer Service Level Agreements (SLA) to institutions using institutional networks covering committed throughput rates, service availability, reliability, repair times, and other service-quality elements customarily offered for comparable services.

65. VN shall respond 24 hours a day, 7 days per week to outages or degradation of service below contracted service for institutional networks. If a reported problem with an institutional network cannot be corrected immediately, VN staff shall promptly explain the status to the institution in person or via phone and provide the approximate time in which the problem will be resolved. A VN representative will verify with the institution that services are working either in person or via telephone before the trouble call is closed out. VN shall provide institutions to which it provides institutional networks with a local manager to whom it can escalate unresolved problems.

### **Miscellaneous**

66. Subject to applicable law, including statutes governing or rules and regulations promulgated by the Federal Communications Commission, VN shall respond to and negotiate with any digital-broadcast service broadcasting in Vermont, including but not limited to any service that provides High Definition TV or Standard Definition TV multicast services, commercially-reasonable terms for the carriage of such services on VN's system. This condition requires VN to use its best efforts to reach agreement on such terms but does not require that VN reach agreement for such carriage.

67. VN shall provide each AMO and each school, public library, and municipality within its service area with a cable modem and Internet access at no charge. The Internet service provided to an AMO's base production facility shall be commercial-class service.

68. VN shall discuss major changes in the delivery of customer service and other aspects of operations, such as installation and repair and system architecture, with the Board and Department prior to finalizing plans and in sufficient time for meaningful input from regulators. VN shall inform the Board and Department in writing of major changes in the delivery of customer service and other aspects of operations at least 30 days prior to implementation.

69. VN shall provide a channel with a reasonable amount of Vermont-related programming, if and when it has constructed 50% of the proposed service area, provided that other cable operators are so obligated to make similar programming available.

#### **Conditions Relating to ValleyNet's Relationships to Vermont Municipalities**

70. VN shall be prohibited from accepting any preference from a municipality in the construction, operation, and maintenance of its plant and facilities in the public rights of way, in underground conduit or ducts, or as attached to utility poles. VN shall not locate plant or facilities for the network used to provide regulated public service pursuant to this CPG in any space on any poles or in any conduits that may be reserved for municipalities pursuant to state statute or Board rules unless such space is subject to a public policy that it is available for non-municipal uses on a nondiscriminatory basis. VN's lack of direct ownership over the facilities used to provide regulated public services under this CPG shall not be a valid defense to a complaint or investigation concerning possible noncompliance with this Condition.

71. VN shall make payments in lieu of local and state taxes in an amount consistent with such taxes imposed on other private cable operators' businesses in the municipalities in which VN offers cable service.

(1) Any Payment In Lieu of Taxes agreements between VN and municipalities shall be reduced to writing, and shall describe the methodologies used for the valuation of various properties, including all real, personal business and nonresidential property owned by VN or owned by others and used by VN in delivering regulated public services pursuant to the CPG, and clearly identify the in lieu of tax rate or rates that will be applied to

the various categories of property, in a manner that allows for determination that the payments in lieu of taxes that VN is required to make are comparable to payments made by private cable operators to the same municipalities.

(2) VN shall file its valuations with the Board and the Department not less than thirty (30) days subsequent to entry of such agreements. Thereafter, within thirty (30) days of executing any amended or successor agreement, VN shall likewise file copies of such agreements with the Board and Department. The Board, as a condition of this CPG, may direct VN to modify or enter into substitute payments in lieu of tax agreements as necessary to establish and maintain competitive neutrality between VN and other cable operators pursuant to applicable state law and regulations.

72. If VN utilizes communications infrastructure owned by or leased by a municipality, VN shall make payments to the municipality that are sufficient to enable the municipality to pay any and all costs associated with the municipality's investment in the infrastructure, including without limitation any lease or debt service payments incurred for acquisition or use of that infrastructure, provided that such payments shall not be less than the fair market value for the use of such infrastructure.

73. VN shall not accept from a municipality any payment or other contribution that is derived from the municipality's taxpayers to cover any losses incurred by VN. Nor will VN accept any payment from a municipality to recover VN's investment in its communications plant that is subject to this CPG in the event that VN abandons or curtails its provision of communications services that are subject to this CPG.

74. VN shall pay fair market value amounts for any municipal services or municipally-owned buildings or land that VN utilizes, leases or purchases, and for any advertising, marketing or promotion of its service offerings through any municipality-owned or controlled medium.

75. Any and all arrangements between VN and a municipality for VN's use of municipal property, or reliance upon municipal services, shall be reduced to written agreements. All such agreements, including any amended or successor agreements, shall be filed with the Department and Board no more than thirty (30) days subsequent to entry. The Board, as a condition of this CPG, may direct VN to modify or enter into substitute agreements as necessary to establish and maintain competitive neutrality between VN and other cable operators.

Dated at Montpelier, Vermont, this 22nd day of January, 2010.

s/ James Volz )

) PUBLIC SERVICE

s/ David C. Coen )

) BOARD

s/ John D. Burke )

) OF VERMONT

OFFICE OF THE CLERK

FILED: January 22, 2010

ATTEST: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*